IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 17728 of 2007(I)

AGAINST THE ORDER DATED 23/01/2007 IN IA 3664/2006 IN OS.241/2004 of ADL.SUB COURT, THALASSERY

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PETITIONERS:

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1. GOVERNMENT OF INDIA, REPRESENTED BY THE SECRETARY FOR DEFENCE, GOVERNMENT SECRETARIAT, NEW DELHI.

2. TRAINING COMMANDER (COLLEGE), NAVAL COLLEGE OF ENGINEERING, I.N.S. SHIVAJI, LONAVALA

3. CHIEF NAVAL STAFF, NAVAL HEAD QUARTERS, NEW DELHI.

4. PRINCIPAL, NAVAL COLLEGE OF ENGINEERING I.N.S., SHIVAJI, LONAVALA.

BY ADV. SRI.K.S.DILIP

RESPONDENTS:

R.V.RAJESH, S/O.K.G.RAMACHANDRAN, AGED 21 YEARS, HOUSE NO.227, WARD NO.MT 7, NEAR MOSQUE, THANA, KANNUR.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 17728/2007 I

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER IN IA NO. 3664/06 IN OS NO. 241/2004 OF SUB COURT, THALASSERY.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N.KRISHNAN, J

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W.P.(C) No. 17728 OF 2007

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Dated this the 9th day of October 2007

JUDGMENT

This writ petition is filed challenging the order of the Sub Court, Thalassery in I.A.No.3664/2006 in O.S.No.241 of 2004. The petition is one for reception of an additional written statement whereby defendants want to raise the contention regarding the question of jurisdiction of the court at Thalassery. A bare perusal of the plaint would reveal that all the defendants are not residing within the territorial limits of the State of Kerala and it can also be further seen that except the factum that the plaintiff is a resident of Thalassery, there is nothing to show that the cause of action had arisen for filing the suit from there. But the question whether there is a belated attempt to raise such a plea and whether Section 21 of the C.P.C. comes to the rescue of the plaintiff, are all matters which have to be considered by the court at the time of considering the question of jurisdiction. Now defendants want to incorporate a contention with regard to the same in the form of an additional written statement. No substantial injustice will be done to the plaintiff by raising such a plea and therefore I

find that the court below was not right in disallowing the application for amendment.

Therefore the order under challenge is set aside and the additional written statement is received. The matter is remitted back to the court below for consideration of the question of jurisdictional issue as a preliminary issue and make it very clear that the plaintiff can raise all contentions with respect to the delay in raising the question of jurisdictional aspect.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-